

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

BRYAN S. BEHRENS, et al.,

Defendants.

8:08-CV-13

MEMORANDUM AND ORDER

The Court has received two filings from *pro se* defendant Bryan S. Behrens: a notice of appeal (filing [393](#)) and a "Motion for leave to Amend Pleading" (filing [394](#)).

The Court understands the defendant's notice of appeal (filing [393](#)) to be an attempt to amend his previously filed notice of appeal (filing [380](#)), to provide a page that was apparently inadvertently omitted. The Court does not understand the defendant to have been trying to initiate a second appeal from the same order.¹ Therefore, the Court has directed the Clerk of the Court to file filing [393](#) as a supplement to the Court of Appeals' record in the defendant's existing appeal, rather than processing it as a new appeal. To be clear, however: nothing about filing [393](#) changes the Court's previous Memorandum and Order (filing [384](#)) finding, pursuant to [28 U.S.C. § 1915\(a\)\(3\)](#), that the defendant's appeal is not taken in good faith and that he may not appeal in forma pauperis.

The defendant's motion for leave to amend pleading seems to be directed at his [Fed. R. Civ. P. 60\(b\)\(4\)](#) motion (filing [373](#)). The Court already disposed of that motion. Filing [374](#). That denial is, in fact, the subject of the defendant's attempt to appeal. *See* filing [380](#). The Court will, therefore, deny the motion for leave to amend (filing [394](#)). The motion at issue has already been disposed of, and nothing about the defendant's proposed amendment

¹ The defendant also asked whether he needed to provide his notice of appeal to the other parties to this case. Filing [393](#) at 7. The defendant is advised that when documents are filed with the Clerk of the Court, the other parties receive electronic notice of the filing, as the other parties in this case are registered to receive electronic service. *See* [NECivR 5.2](#).

has any bearing on the Court's basis for rejecting the motion.² The defendant's attempt to rearrange the *Titanic's* deck chairs would be futile even if the boat *hadn't* already sunk.

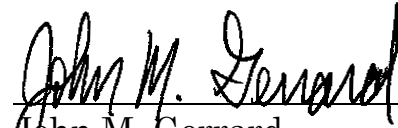
In order to make sure that the record is clear, the Court will direct the Clerk of the Court to provide a copy of this memorandum and order to the Court of Appeals.

IT IS ORDERED:

1. The defendant's motion for leave to amend pleading (filing [394](#)) is denied.
2. The Clerk of the Court is directed to send a copy of this order to the Eighth Circuit Court of Appeals.

Dated this 30th day of December, 2013.

BY THE COURT:



John M. Gerrard
United States District Judge

² The defendant may have been confused by a reference to a "1983 prisoner civil rights case" in the in forma pauperis memo prepared for the Court by the Clerk of the Court. Filing [381](#). The defendant is advised that filing [381](#) (and the similar filing [395](#)) are simply memoranda from the Clerk's Office to judge's chambers; they have no legal effect